

(28,879)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 365.

HOUSTON COAL COMPANY, PLAINTIFF IN ERROR,

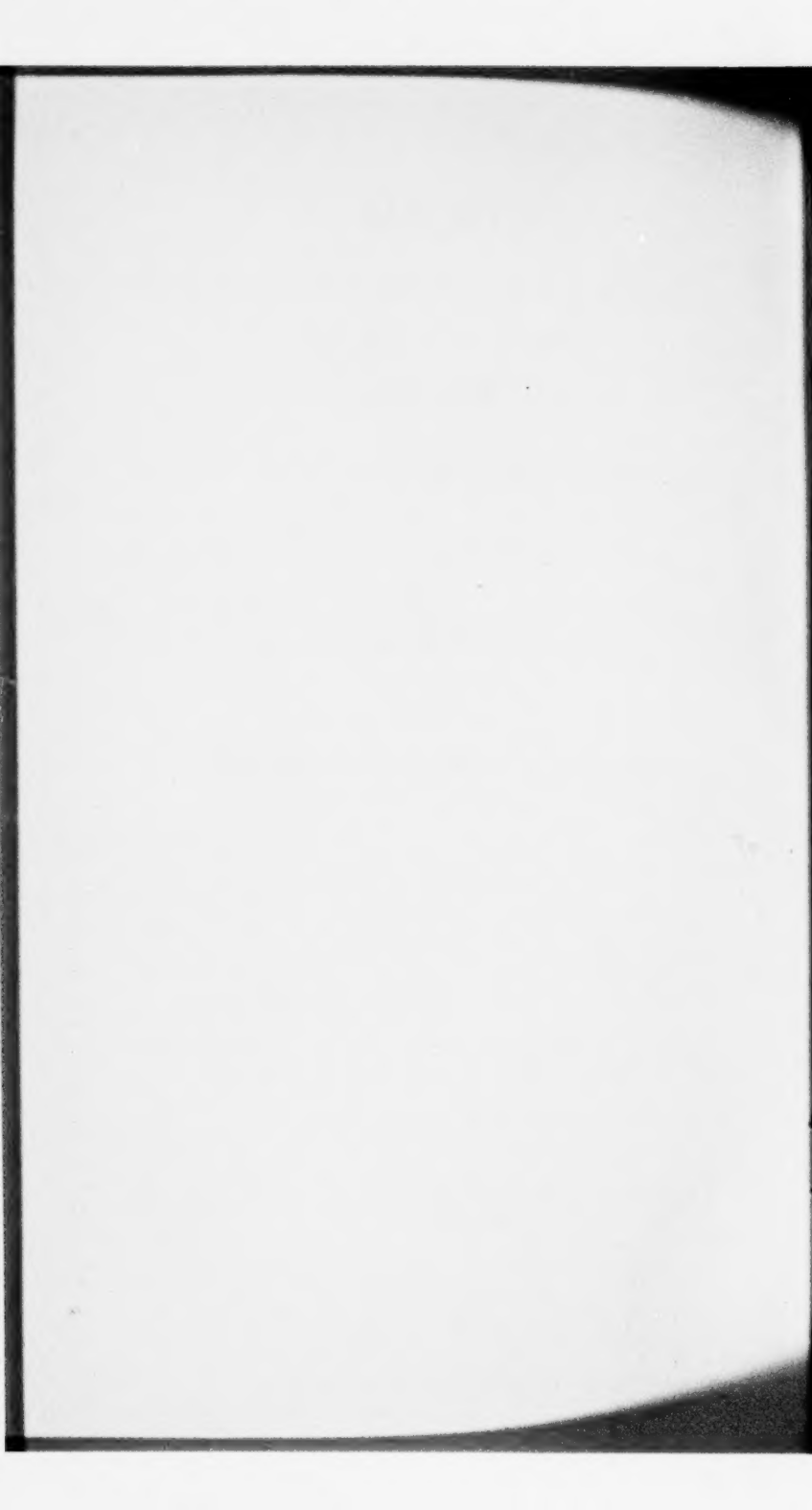
vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO.

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1 Filed September 26, 1921.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Petition.

The Houston Coal Company, plaintiff herein, at all of the times hereinafter mentioned was, and now is, a corporation created by, and duly organized and existing under the laws of the State of West Virginia, and was at such times, and is, a citizen of the United States. At all of such times said plaintiff was, and now is, engaged in the purchase and sale of coal.

First Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276) the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy on or about April 1, 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property of this plaintiff, and as a just compensation therefore, refused to pay a greater sum than \$4.00 a gross ton for said coal over the protest of this plaintiff. That thereupon the said plaintiff was commanded by the

2 Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed. The amount received by the plaintiff for said coal was \$4.00 a gross ton, whereas the proper and just compensation for said coal when the same was requisitioned, was not less than \$8.00 a gross ton, F. O. B. mines, and this plaintiff has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton, or a total of \$8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) in the sum of \$705.33.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of \$8,705.33.

(Second to Forty-fourth Causes of Action, Inclusive.)

Wherefore plaintiff prays that a copy of this petition filed herewith may be delivered to and served upon the District Attorney of the

United States for the Southern District of Ohio, Western Division; that the plaintiff recover of said defendant the total of all the foregoing sums, to-wit: the sum of \$314,730.74; that the plaintiff have a judgment for the total sum of \$314,730.74 and a decree upon the facts and the law; that the plaintiff recover its costs from the defendant and obtain such other and further relief as shall seem to the Court just and proper.

FREIBERG & GEOGHEGAN,
Attorneys for Plaintiff.

STATE OF OHIO,
Hamilton County, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the petition and that the affiant is authorized and does make this affidavit on behalf
3 of said corporation, and that the facts stated in the foregoing petition are true as this affiant verily believes.

(Signed)

T. E. HOUSTON.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.]

H. C. UPSON,
Notary Public, Hamilton County, Ohio.

4 In the District Court of the United States, Southern District of Ohio, Western Division.

At Law.

No. 3050.

HOUSTON COAL COMPANY, a West Virginia Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Affidavit of Plaintiff as to the Service of Copy of Petition and Mailing of Registered Letter.

STATE OF OHIO,
Hamilton County, ss:

T. E. Houston, being first duly sworn, deposes and says that he is President of the Houston Coal Company, a West Virginia corporation, the plaintiff in the above entitled action; that on the 26th day of September, 1921, plaintiff caused a copy of the petition filed herein to be served upon the District Attorney of the United States in the Southern District of Ohio, Western Division, thereof; that he is in the District wherein suit was brought, and the plaintiff mailed a copy of said petition by registered letter, of which a true copy is

hereto attached, made part hereof and marked "Exhibit A," to the Attorney General of the United States.

(Signed)

T. E. HOUSTON.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.]

H. C. UPSON,

Notary Public, Hamilton County, Ohio.

5

"EXHIBIT A."

Registered.

Cincinnati, Ohio, Sept. 26, 1921.

To the Honorable the Attorney General of the United States,
Washington, D. C.:

Enclosed you will find copy of petition in the suit of the Houston Coal Company, a West Virginia corporation, vs. The United States of America, No. 3050 at Law, filed this date in the United States District Court, for the Southern District of Ohio, Western Division.

Kindly acknowledge receipt.

Respectfully,

(Signed)

HOUSTON COAL COMPANY,
By T. E. HOUSTON,
President.

6

In the District Court of the United States, Southern District of Ohio, Western Division.

At Law.

No. 3050.

HOUSTON COAL COMPANY, a Corporation under the Laws of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Affidavit of A. J. Freiberg as to Service of Copy of Petition on District Attorney of the United States, Southern District of Ohio, Western Division.

STATE OF OHIO,

Hamilton County, ss:

A. J. Freiberg, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above entitled cause; that on the 26th day of September, 1921 he served a copy of the petition filed herein, upon the District Attorney of the United States, personally at Cincinnati, Ohio, in said district.

(Signed)

A. J. FREIBERG.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.]

HENRY M. BRUESTLE,
Notary Public, Hamilton County, Ohio.

7

Filed Jan. 13, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Motion to Dismiss.

Now comes the defendant and moves the court to dismiss the petition filed herein for the following reasons:

1. That said petition does not contain allegations showing that this court has jurisdiction.

2. That said petition does not contain allegations sufficient to constitute a cause of action against the defendant, the United States of America.

JAMES R. CLARK,
United States Attorney,
By ALLEN C. ROUDEBUSH,
Assistant United States Attorney.

8 In the District Court of the United States, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Opinion.

Filed Feb. 7/22.

PECK, *District Judge:*

On motion to dismiss for want of jurisdiction and for failure to state a cause of action.

The petition alleges forty-two causes of action, identical except as to dates, quantities and amounts, each claiming the difference between the value and the amount received by the plaintiff from the Government for coal requisitioned by the President under Section 10 of the National Defense (Lever) Act, August 10, 1917, U. S. Comp. Stat. (1919) 3115-1/8ii. The allegation common to all counts is that the President, by the Secretary of War, requisitioned as necessary to the maintenance of the Navy, a certain quantity of coal, "and as a just compensation therefor, refused to pay a greater sum than \$4.00 a gross ton for said coal over the protest of this plaintiff;" that the coal was delivered pursuant to command of the Secretary of the Navy, and that "The amount received by the plaintiff for said coal was \$4.00 a gross ton, whereas the proper and just compensation for said coal when the same was requisitioned was not less than \$8.00" (or some other sum larger than \$4.00, varying in the different counts), with a prayer for judgment for the difference. The differences on all counts amount to \$314,730.74.

It is fair to construe this pleading to mean that the President fixed \$4.00 per ton as just compensation over the protest of the plaintiff; that the plaintiff delivered the coal and was then paid and received the amount so fixed by the President. The law referred to provides:

"If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessities or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies."

The Act contemplates and authorizes the requisitioning and taking of the supplies necessary for the support of the Army and Navy, or other public use connected with the common defense, in advance of the making of the compensation. The power and duty of ascertainment and payment of a just compensation was in the first instance with the President. The owner had his election of accepting the amount so fixed or of receiving three-fourths thereof and suing for the balance. It was not contemplated that he might receive the full amount and also preserve his controversy and bring it into this court. It was only in extinguishment of the claim that payment of the full award was authorized, and therefore it was only in full satisfaction of the demand that such payment could be received. The authorization was not to pay it on account and leave open a claim against the United States, but to pay in full. By receiving payment of the full amount the claimant necessarily acceded to the condition impressed by law upon such payment, that is to say, acceded to receive it in satisfaction of the obligation. Having had his election to take all in full or three-fourths on account, and having chosen the former, he cannot claim now the privilege which he would have had had he elected the latter.

It is only when a controversy within the terms of the Act is stated that this court has jurisdiction to entertain it against the United States. The jurisdiction provided for in the Act is exclusive (*United States v. Pfisch*, decided by the Supreme Court June 1, 1921), and if this court may not entertain the case by virtue of this particular Act, it may not entertain it at all. That the petition must show a case within the statutory permission to sue the United States or fail for want of jurisdiction is undoubted. *Hill v. United States*, 149 U. S. 593. Recent illustrations are *Haupt v. United States*, 254 U. S. 272; *Great Western Serum Co. v. United States*, 254 U. S. 240; and *United States v. Nederlansch-Amerikaansche Stoomvaart (Maatschappij (Holland-American Lijn))*, 254 U. S. 148. That permission is extended by the Act now under consideration to those to whom the award is unsatisfactory and who have been paid (or are entitled to be paid) seventy-five per centum thereof, and not to those who have accepted the entire award. The authorization is "to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation." No such case is here stated.

11 Paraphrasing the Act, the present suit may be said to be one to recover such further sum in addition to the full award of the President, receipt of which is acknowledged by plaintiff, as will make up what plaintiff contends will be just compensation. The Government has consented to be sued by those who, being dissatisfied, having accepted three-fourths of the award, but it is impossible to find assent to be sued by those who have accepted the award in full and merely desire the review of a determination of which they have had full advantage. The President's authority to fix just compensation became conclusive upon the plaintiff when it accepted the amount fixed, and no justiciable controversy was left open to be brought here under the Act. So that it is apparent that this case must be dismissed, both for want of jurisdiction and for failure to state a cause of action.

There seems to be nothing to the contrary in the cases cited by plaintiff. *United States v. Pfisch*, supra, was dismissed for want of jurisdiction, because jurisdiction in a case such as this was held to be the ordinary jurisdiction of the District Court, with trial by jury, which should have gone to the Circuit Court of Appeals, instead of directly to the Supreme Court by writ of error. *United States v. McGrane*, 270 Fed. 761, holding such claimant entitled to trial by jury, apparently comes no nearer to the present issue. That the case is one essentially of the exercise of eminent domain, as held in *Filbin Corporation v. United States*, 265 Fed. 354, does not help the plaintiff, for it was quite competent for Congress to vest in the President power of determining in the first instance what just compensation should be, and to provide that he who accepted that sum should be foreclosed, preserving the right of him who declined such

12 settlement and took only three-fourths thereof on account, to have his remedy over. *Bauman v. Ross*, 167 U. S. 548, 593, where it is said: "By the Constitution of the United States, the estimate of the just compensation for property taken for the public use,

under the right of eminent domain, is not required to be made by a jury; but may be entrusted by Congress to commissioners appointed by a court or by the executive, or to an inquest consisting of more or fewer men than an ordinary jury." Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 695.

It is urged that the constitutional right to just compensation entitles the claimant to a judicial ascertainment of the amount. *Mongahela Navigation Co. v. United States*, 148 U. S. 312, 327. But the plaintiff was not denied that right under Section 10 of the Act; and could have enjoyed it by accepting three-fourths of the amount fixed by the President and suing for the balance of its claim. But it waived this right when it accepted what was paid as full compensation, for the payment of the entire award could have been made on no other consideration, under the law, than as full compensation.

It is urged by the Government that the venue is not here because the plaintiff corporation is a citizen of West Virginia, and rejoined by the plaintiff that the Government has waived this point, if not by objecting to jurisdiction of the subject-matter, at any rate by moving to dismiss for failure to state a cause of action, that is to say, by demurring generally, in effect. *United States v. Hvoslef*, 237 U. S. 1. But this it is not necessary to determine, as the case must fail upon the major issues presented.

13 For Plaintiff: Freiberg & Geoghegan, Cincinnati, Ohio.
For Government: James R. Clark, United States Attorney,
Allen C. Roudebush, Assistant United States Attorney.

14 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating
under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry.

Entered Feb. 21/22.

This cause coming on to be heard on the motion of the defendant for a dismissal of the petition on the ground that the court has no jurisdiction, and on the ground that the petition does not state facts sufficient to constitute a cause of action, the court being fully advised in the premises does sustain said motion on the ground that the court has no jurisdiction of the subject matter, to which the plaintiff excepts, and the court having sustained the same does grant to the plaintiff leave to file an amended petition within three days.

15 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Amended Petition.

Filed Feb. 21/22.

The Houston Coal Company, plaintiff herein, at all of the times hereinafter mentioned was, and now is, a corporation created by, and duly organized and existing under the laws of the State of West Virginia, and having an office at Cincinnati, Hamilton County, Ohio, and was at such times, and is, a citizen of the United States. At all of such times said plaintiff was, and now is, engaged in the purchase and sale of coal.

First Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917 (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 1st 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property
16 of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$8,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it

might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$8,000.00, and that said sum of \$8,000.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

17 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$705.33.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$8,705.33.

Second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 12, 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of
18 law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$8,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation

over and above said sum of \$4.00 per gross ton, and over and above said sum of \$8,000.00, and that said sum of \$8,000.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

19 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$689.33.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$8,689.33.

Third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 23, 1920, 477
20 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$1,908.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, pre-
tested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above

21 said sum of \$1,908.00, and that said sum of \$1,908.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$1,908.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$161.10.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$2,069.10.

Fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States, 22 acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 27, 1920, 1,500 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$6,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$6,000.00, and that said sum of \$6,000.00 was 23 paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$6,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$502.00.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$6,502.00.

Fifth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 1, 1920, 1,064 1240/2240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$4,258.21.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$4,258.21, and that said sum of \$4,258.21 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$4,258.22, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$354.14.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$4,612.36.

Sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 1, 1920, 260 500/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$1,040.89.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$1,040.89, and that said sum of \$1,040.89 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been

deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$8.00 per gross ton, to-wit: \$4.00 per gross ton or a total of \$1,040.90, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$86.57.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,127.47.

Seventh Cause of Action.

Claiming to Act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 25, 1920, 59 1,440/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$238.57.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above the said sum of \$238.57, and that said sum of \$238.57 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Con-

stitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$9.00 per gross ton, to-wit: \$5.00 per gross ton, or a total of \$298.22, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$23.56.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$321.78.

Eighth Cause of Action.

29 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917 (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 26, 1920, 48 1,880/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$195.35.

30 Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$195.35, and that said sum of \$195.35 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under

favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$9.00 per gross ton, to-wit: \$5.00 per gross ton or a total of \$244.20, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$19.25.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$263.45.

31

Ninth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 30th 1920, 1,040 1,900/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$4,163.39.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy.

32 as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$4,163.39, and that said sum of \$4,163.39 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$10.50 per gross ton, to-wit: \$6.50 per gross ton, or a total of \$6,765.52, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$528.34.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$7,294.36.

Tenth Cause of Action.

33

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 5th 1920, 2,798 780/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 per gross ton, in all the sum of \$11,193.39.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$11,193.39, and that said sum of \$11,193.39 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

34 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$11.00 per gross ton,

to-wit: \$7.00 per gross ton, or a total of \$19,588.44, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$1,514.83.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$21,103.27.

35

Eleventh Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 8, 1920, 3,235 1,300/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$12,942.32.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$12,942.32, and that said sum of \$12,942.32 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between \$4.00 per gross ton, and \$11.00 per gross ton, to-wit: \$7.00 per gross ton, or a total of \$22,649.06, and the plaintiff has been further damaged by reason of said requisitioning (and in

the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$1,740.20.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$24,389.26.

Twelfth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 16, 1920, 41 1,960/2,240 tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$167.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$167.50, and that said sum of \$167.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$13.00 per gross ton, to-wit: \$9.00 per gross ton, or a total of \$376.88, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$28.45.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$405.33.

39

Thirteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 30, 1920, 36 1,960/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$147.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights

40 which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$147.50, and that said sum of \$147.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$15.00 per gross ton, to-wit: \$11.00 per gross ton, or a total of \$405.63, and the plaintiff has been further damaged by reason of said requisitioning, (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$29.68.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$435.31.

Fourteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 1, 1920, 46 1,360/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$186.43.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in accepting said sum, it, the plaintiff, 42 protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above the said sum of \$186.43, and that said sum of \$186.43 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$16.00 per gross ton, to-wit: \$12.00 per gross ton, or a total of \$559.28, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$40.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$600.20.

43

Fifteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 7, 1920, 1,546 260/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$6,184.46.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum

under duress, and because of the threats of the officers of the
44 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$6,184.46, and that said sum of \$6,184.46 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done. it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$16.00 per gross ton, to-wit: \$12.00 per gross ton, or a total of \$18,553.40, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$1,338.94.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$19,892.34.

Sixteenth Cause of Action.

45

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 19, 1920, 60 100/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$240.18.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$240.18, and that said sum of \$240.18 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

46 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$16.00 per gross ton, to-wit: \$12.00 per gross ton, or a total of \$720.53; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$50.56.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$771.09.

47

Seventeenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 24, 1920, 50 600/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 per gross ton, in all the sum of \$201.07.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

48 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 a gross ton, and over and above said sum of \$201.07, and that said sum of \$201.07 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$16.00 per gross ton, to-wit: \$12.00 per gross ton, or a total of \$603.22; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$41.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$645.14.

Eighteenth Cause of Action.

49 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 5, 1920, 118 680/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$473.21.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, 50 protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$473.21, and that said sum of \$473.21 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$18.00 per gross ton, to-wit: \$14.00 per gross ton, or a total of \$1,656.25; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$111.52.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,767.77.

51

Nineteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 14, 1920, 3,568 380/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$14,272.68.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
52 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$14,272.68, and that said sum of \$14,272.68 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.00 per gross ton and \$19.00 per gross ton, to-wit: \$15.00 per gross ton, or a total of \$53,522.54; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$3,541.48.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of \$57,064.02.

Twentieth Cause of Action.

53 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 23, 1920, 139 2,040/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$559.64.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$559.64, and that said sum of \$559.64 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

54 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$21.00 per gross ton, to-wit: \$17.00 per gross ton, or a total of \$2,378.48; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$153.81.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$2,532.29.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 15, 1920, 100 1,400/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 per gross ton, in all the sum of \$402.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$402.50, and that said sum of \$402.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$20.00 per gross ton, to-wit: \$16.00 per gross ton, or a total of \$1,610.00; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$101.70.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,711.70.

Twenty-second Cause of Action.

57 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 11, 1920, 302 520/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$1,208.93.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$1,208.93, and that said sum of \$1,208.93 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$14.70 per gross ton, to-wit: \$10.70 per gross ton, or a total of \$3,233.88; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$198.34.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$3,432.22.

Twenty-third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 21, 1920, 2,545 900/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$11,721.58.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, asserting that it accepted said sum under duress, and because of the threats of the officers of the
60 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$11,721.58, and that said sum of \$11,721.58 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between \$4.605 per gross ton and \$14.70 per gross ton, to-wit: \$10.095 per gross ton, or a total of \$25,695.83; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$1,533.18.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$27,229.01.

Twenty-fourth Cause of Action.

61 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 1, 1920, 1,382 720/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.00 a gross ton, in all the sum of \$5,529.29.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

62 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.00 per gross ton, and over and above said sum of \$5,529.29, and that said sum of \$5,529.29 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.00 per gross ton and \$16.15 per gross ton, to-wit: \$12.15 per gross ton, or a total of \$16,795.20; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$976.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$17,772.12.

Twenty-fifth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 1, 1920, 1,345 500/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$6,194.75.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$6,194.75, and that said sum of \$6,194.75 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$16.15 per gross ton, to-wit: \$11.545 per gross ton, or a total of \$15,530.60; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$903.36.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$16,433.96.

Twenty-sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 4, 1920, 1,810 600/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$8,336.28.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$8,336.28, and that said sum of \$8,336.28 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$15.20 per gross ton, to-wit: \$10.595 per gross ton, or a total of \$19,179.79; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$1,102.84.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$20,282.63.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large, 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 5, 1920, 172 1,320/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$794.77.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$794.77, and that said sum of \$794.77 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$13.70 per gross ton, to-wit: \$9.095 per gross ton, or a total of \$1,569.70; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$90.00.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,659.70.

Twenty-eighth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 23, 1920, 59 40/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$271.78.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment. under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$271.78, and that said sum of \$271.78 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$14.20 per gross ton, to-wit: \$9.595 per gross ton, or a total of \$566.27, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$30.86.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$597.13.

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Twenty-ninth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, on or about October 30th 1920, requisitioned as necessary to the maintenance of the Navy, 1,781 1,160/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$8,203.89.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment,

under protest however, plaintiff asserting that it accepted said
72 sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$8,203.89, and that said sum of \$8,203.89 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$13.90 per gross ton, to-wit: \$9.295 per gross ton, or a total of \$16,559.21; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$882.52.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$17,441.73.

Thirtieth Cause of Action.

3 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, 40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 1, 1920, 85 400/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$392.25.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$392.25, and that said sum of \$392.25 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

74 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between \$4.605 per gross ton, and \$12.20 per gross ton, to-wit: \$7.595 per gross ton, or a total of \$646.93; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$34.40.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of \$681.33.

Thirty-first Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 5, 1920, 2,490 1,700/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$11,469.94.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
76 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$11,469.94, and that said sum of \$11,469.94 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$12.20 per gross ton, to-wit: \$7.595 per gross ton, or a total of \$18,917.32; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$993.16.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$19,910.48.

Thirty-second Cause of Action.

77 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 1, 1920, 1,505 300/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$6,931.14.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, 78 protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$6,931.14, and that said sum of \$6,931.14 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$10.60 per gross ton, to-wit: \$5.995 per gross ton, or a total of \$9,023.28; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done, and by delay in payment of the proper sums due, the sum of \$434.62.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$9,457.90.

Thirty-third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 1, 1920, 50 2,200/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$234.77.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$234.77, and that said sum of \$234.77 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$10.60 per gross ton, to-wit: \$5.995 per gross ton, or a total of \$305.64; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$14.72.

Whereupon, there is due and owing from the defendant to said plaintiff the sum of \$320.36.

Thirty-fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 8, 1920, 239 640/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$1,101.91.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above the said sum of \$4.605 per gross ton, and over and above the said sum of \$1,101.91, and that said sum of \$1,101.91 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$7.20 per gross ton, to-wit: \$2.595 per gross ton, or a total of \$620.95; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$29.08.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$650.03.

Thirty-fifth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 29th 1920, 2,407 1,220/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff, for said coal, the sum of \$4.605 per gross ton, in all the sum of \$11,086.74.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the *of the* threats of the officers

84 of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$11,086.74, and that said sum of \$11,086.74 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$5.20 per gross ton, to-wit: \$.595 per gross ton, or a total of \$1,432.49; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$62.07.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,494.56.

Thirty-sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 31, 1920, 1,581 1,660/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$7,283.92.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment,

under protest however, plaintiff asserting it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$7,283.92, and that said sum of \$7,283.92 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$6.30 per gross ton, to-wit: \$1.695 per gross ton, or a total of \$2,681.05, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$115.73.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$2,796.78.

Thirty-seventh Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 31, 1920, 793 180/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$3,652.14.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$3,652.14, and that said sum of \$3,652.14 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$6.30 per gross ton, to-wit: \$1.695 per gross ton, or a total of \$1,344.27; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$58.02.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,402.29.

Thirty-eighth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 29, 1921, 2,732 120/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$12,581.11.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$12,581.11, and that said sum of \$12,581.11 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$4.70 per gross ton, to-wit: \$.095 per gross ton, or a total of \$259.54; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$9.95.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$269.49.

Thirty-ninth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 26, 1921, 2,723 680/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$12,540.81.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

92 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$12,540.81, and that said sum of \$12,540.81 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between \$4.605 per gross ton and \$4.70 per gross ton, to-wit: \$.095 per gross ton, or a total of \$258.72; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$10.05.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$268.77.

Fortieth Cause of Action.

93 Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 1, 1921, 2,918 180/2,240 gross tons of Pocahontas run-of-mine coal, which was the property of the plaintiff and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$13,437.76.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$13,437.76, and that said sum of \$13,437.76 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

94 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$4.95 per gross ton, to-wit: \$.345 per gross ton or a total of \$1,006.74; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sum due, the sum of \$38.42.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of \$1,045.16.

Forty-first Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 1, 1921, 404 1,940/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$1,864.41.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights
96 which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$1,864.41, and that said sum of \$1,864.41 was paid to the plaintiffs, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$4.95 per gross ton, to-wit: \$.345 per gross ton, or a total of \$139.68; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$5.33.

Wherefore, there is due and owing from the defendant to the said plaintiff the sum of \$145.01.

Forty-second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 12, 1921, 3,013 280/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$13,875.44.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy,

as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above the said sum of \$13,875.44, and that the said sum of \$13,875.44 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$4.70 per gross ton, to-wit: \$.095 per gross ton, or a total of \$286.25; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$10.35.

Wherefore, there is due and owing from the defendant to the said plaintiff the sum of \$296.60.

Forty-third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 1, 1921, 2,212 2,020/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 per gross ton, in all the sum of \$10,190.41.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

100 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$10,190.41, and that said sum of \$10,190.41 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said \$4.605 per gross ton and \$4.70 per gross ton, to-wit: \$.095 per gross ton, or a total of \$210.23; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of \$6.97.

Wherefore, there is due and owing from the defendant to the plaintiff the sum of \$217.20.

Forty-fourth Cause of Action.

101

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 1, 1921, 238 480/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, \$4.605 per gross ton which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of \$4.605 a gross ton, in all the sum of \$1,096.98.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of \$4.605 per gross ton, and over and above said sum of \$1,096.98, and that said sum of \$1,096.98 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said \$4.605 per gross ton and \$4.70 per gross ton, to-wit: \$.095 per gross ton, or a total of \$22.63; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of \$.75.

Wherefore, there is due and owing from the defendant to the said plaintiff, the sum of \$23.38.

103 Wherefore, plaintiff prays that a copy of this amended petition filed herewith may be delivered to and served upon the District Attorney of the United States for the Southern District of Ohio, Western Division; that the plaintiff recover of said defendant the total of all the foregoing sums, to wit: the sum of \$314,730.74; that the plaintiff have a judgment for the total sum of \$314,730.74, and a decree upon the facts and the law; that the plaintiff recover its costs from the defendant and obtain such other and further relief as shall seem to the Court just and proper.

FREIBERG AND GEOGHEGAN,

Attorneys for Plaintiff.

STATE OF OHIO,

County of Hamilton, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the Amended Petition and that the affiant is authorized and does make this affidavit on behalf of said corporation, and that the facts stated in the foregoing Amended Petition are true as this affiant verily believes.

T. E. HOUSTON.

Subscribed and sworn to before me this 20th day of February, 1922.

[SEAL.]

H. C. UPSON,

Notary Public, Hamilton Co., O.

My Commission expires June 4, 1923.

104 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Motion to Dismiss Amended Petition.

Filed Feb. 23, 1922.

Now comes the defendant and moves the court to dismiss the amended petition filed herein, for the following reasons:

1. That said amended petition does not contain allegations showing that this Court has jurisdiction.

2. That said amended petition does not contain allegations sufficient to constitute a cause of action against the defendant, the United States of America.

JAMES R. CLARK,
United States Attorney,
By ALLEN C. ROUDEBUSH,
Assistant United States Attorney.

105 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry Ordering Amendment of Amended Petition.

Entered Feb. 27, 1922.

This cause having come on for argument on the motion of the plaintiff to dismiss the amended petition, the court hereby grants leave to plaintiff to amend the amended petition by inserting in each cause of action after the fifth paragraph of said causes of action, a paragraph setting forth what facts the plaintiff claims constituted the duress under which it claims to have accepted the sums fixed by the President as set forth in each of the several causes of action, and it is further ordered that the motion stand as against the amended petition so amended.

106 Filed Feby. 27, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Amendment to Amended Petition.

Plaintiff says that said threats were to the effect that a certain document must be signed by the plaintiff electing either to accept the price so fixed by the President in full of its claim or to express a

willingness to receive 75% of said amount and sue the United States for the difference between said 75% and what would make up just compensation; that when the plaintiff protested against signing said document, it was informed by said officers that said document was an order and not a contract and must be obeyed, and that if it was not obeyed, certain payments then due or to become due to said plaintiff would not be paid, and that its coal and its mines, and those under its control, would be confiscated and taken over by and through said officers acting for the United States, although there was no claim by said officers that the President had, or would find it necessary to secure an adequate supply of necessities for the support of the Army, or the maintenance of the Navy, or for any other public use connected with the common defense to take over its mines or confiscate its coal, and although there was in fact and to the full knowledge of the President and of said officers an abundant supply or source of supply for all of said purposes at just and reasonable prices, and although the plaintiff had failed or neglected in no wise to conform to the prices or regulations fixed or made by the President, or to conduct its business efficiently, or to do any of the things required by it to be done under Section 25 of the foregoing act of Congress, or any section thereof.

Plaintiff further says that the same threats were made by the same officers touching the acceptance by said plaintiff of said price so fixed by the President as just compensation, and under the same circumstances as aforesaid, and that said orders were obeyed and said price was accepted by the plaintiff in fear of said threats, and in the belief that but for compliance with said orders and said fixing of prices, it would be barred from receiving the money then due or owing to it from the United States, or about to become due, and it would have its coal confiscated, and would be deprived of the control of the mines and other properties belonging to it or under its supervision and control, greatly to its loss and detriment.

FREIBERG & GEOGHEGAN,
Attorneys for Plaintiff.

STATE OF OHIO,
County of Hamilton, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the Amended petition, and that the affiant is authorized and does make this affidavit on behalf of said corporation, and that the facts stated in the foregoing Amendment to the Amended petition are true as he verily believes.

T. E. HOUSTON.

Subscribed and sworn to before me this 24th day of February, 1922.

[SEAL.]

H. C. UPSON,
Notary Public, Hamilton County, Ohio.

108 In the District Court of the United States, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, Plaintiff,

VS.

UNITED STATES OF AMERICA, Defendant.

Opinion.

Filed March 31, 1922.

PECK, District Judge:

On motion to dismiss *to dismiss* the amended petition as amended.

It has been heretofore held with regard to the original petition that unless the case stated falls within the permission to sue granted by the tenth section of the National Defense Act, there is no jurisdiction against the United States, and further, that such statutory permission does not extend to one who has received in full the amount awarded by the President as just compensation under that Act.

In avoidance of this situation plaintiff now alleges, by amendments, that its receipt of the award was not in effect an actual acceptance because its settlement with the Government was executed under duress. It is alleged that plaintiff was compelled to elect in writing over its signature whether it would accept the award in full or seventy-five per cent thereof and sue for the balance of just compensation; that it was forced thereto by threats of the "Secretary of the Navy through officers of the Navy thereunto authorized" that unless it signed, money then due it for coal would be withheld and that its coal and mines would be confiscated, although the President had not declared the necessity for so doing and although no such necessity in fact existed; and that the same threats were repeated touching the receipt of the money.

109 The election which plaintiff says it was compelled to make by threats was the election necessary to be made under the statute. The alleged threats put upon the plaintiff no greater hardship than did the law. Plaintiff does not aver that in the making of its choice it was influenced by threats one way or the other, but only that it was forced to choose. For anything shown by the petition, the plaintiff's election to accept the award in full, rather than seventy-five per cent and obtain the right to sue, was uncontrolled, free and voluntary. And this is emphasized by the fact that the plaintiff does not state that it has ever rescinded that election or tendered back to the Government the additional twenty-five per cent. Contracts made under duress are not void, but voidable. They are valid until rescinded. Rescission must be within a reasonable time after the duress is removed, and must be accompanied by a return of that

which was acquired under the enforced contract. 9 R. C. L., Duress, page 725.

Plaintiff claims that it is not required to tender the excess over and above seventy-five per cent under the familiar rule that one need not tender back that to which the other admits he is entitled. But under the Act of the President's award determines the compensation only for purposes of settlement. The award, if accepted, binds both parties; if rejected, it binds neither. If the claimant is not willing to accept it, and sues for more, he must risk getting less, and so in the interim is given but seventy-five per cent of the award in hand. Therefore, it cannot be said that it is admitted as a matter of law that plaintiff, had it elected the partial settlement, would never the less have been entitled in any event to the full award; hence the necessity of rescinding and tendering back the twenty-five per cent, in order to undo such a settlement if made under duress.

Furthermore, the threats relied upon do not constitute duress. It is not averred that there was duress of person or of property.

110 The threatened withholding of payment is not duress. *Silliman vs. United States*, 101 U. S. 465. The threatened confiscation and taking over of the mines were steps that the President had a right to take under the twelfth section of the Act, giving right, of course, to just compensation. It is not alleged that there was no finding of necessity for so doing if the claimant and others refused to supply fuel. The allegation is that "there was no claim by said officers" that the President had found or would find such necessity. The threats are alleged to have been made by the Secretary of the Navy through those acting under him. The President speaks by the heads of his departments, and the Secretary of War must be presumed to have been acting by direction of the President. *Porter vs. Coble*, 246 Fed. 244, 249. Furthermore, in carrying out the purposes of the National Defense Act the President was, by Section 2, authorized to utilize any department or agency of the Government. It was, therefore, for the President to say whether and when necessity existed, speaking in this instance through the Secretary of the Navy, and his determination of that question was final. Threats of resort to processes or expedients authorized by law certainly put no one in duress. The authorities go even further.

In *Silliman vs. United States*, supra, the Quartermaster's Department of the Army demanded that claimants execute new charter-parties containing stipulations essentially different from those by which they had previously chartered barges to the Government and which were still in force, as to compensation, and announced its purpose to retain possession of the barges and withhold all compensation unless and until the claimants executed the same. They signed the new agreement, protesting that it was executed against their wishes and under the pressure of financial necessity, and thereafter sued for the compensation originally stipulated. It was held that the facts stated were insufficient to prove duress.

111 It is concluded that in as much as there is no sufficient averment of duress controlling plaintiff's election to receive the award in full, or of rescission with an offer to restore the former

status, that the election to receive, and receipt of, the amount of the award constituted settlement in full.

It is argued that the interpretation herein adopted of the tenth section of the Lever Act results in the taking of property without due process of law, and that due process is no different in time of war than in time of peace.

While the war created no new powers, it undoubtedly required the exercise of powers latent in time of peace. *McKinley vs. United States*, 249 U. S. 397. Public danger warrants the substitution of executive process for judicial process. *Moyer vs. Peabody*, 212 United States 78. Furthermore, the plaintiff had its opportunity to avail itself of judicial process, but elected not to do so.

Plaintiff's petition states no case permitted by law to be brought against the United States and therefore must be dismissed for want of jurisdiction.

For Plaintiff: Freiberg & Geoghegan, Cincinnati, Ohio.

For Defendant: James R. Clark, United States Attorney.

112

Entered April 10, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry.

This cause coming on to be heard on the motion of the defendant for a dismissal of the amended petition as amended by leave of court hereinbefore given, the court being fully advised in the premises, does sustain said motion on the ground that the court has no jurisdiction of the subject matter, and the plaintiff failing to plead further, it is ordered, adjudged and decreed that the defendant, the United States of America is hence dismissed with its costs to all of which the plaintiff excepts.

113 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Petition for Writ of Error.

(Filed April 10th, 1922.)

Now comes the above named plaintiff, Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, by its attorney, and says that this cause was commenced in the District Court of the United States for the Southern District of Ohio, Western Division, on the 26th day of September 1921.

That thereafter, and on the 13th day of January 1922, the defendant interposed a motion to dismiss the cause; that thereupon, and on the 21st day of February 1922, the court sustained the motion and gave the plaintiff leave to file an amended petition; that on the 21st day of February 1922, the said plaintiff filed in this court, and in due time, its said amended petition; that thereupon, to-wit: on the 23d day of February 1922, the defendant renewed its motion to dismiss the cause; that thereupon, on the 27th day of February 1922, the court, pending final argument, made an order giving to the plaintiff leave to file an amendment to the amended petition which was accordingly filed on the 27th day of February 1922.

114 That thereafter, and on the 10th day of April 1922, and after argument duly had, this court granted the motion to dismiss and did dismiss the plaintiff's petition for lack of jurisdiction of the subject matter.

That in this cause the jurisdiction of the court was and is in issue, and the question decided by this court was the question of the jurisdiction of the court. That this court, in and by said order and judgment, determined and decided in favor of the defendant against the plaintiff that the court had no jurisdiction of the subject matter.

That the plaintiff is aggrieved by said decisions sustaining the motions of the defendant and entering judgment in favor of defendant and against the plaintiff.

Plaintiff further says that in said orders and judgments of the court dismissing the petition, and the amended petition as amended, filed herein, for lack of jurisdiction of the subject matter, errors were committed to the prejudice and great damage of the plaintiff, all of which will in more detail appear in the record of this cause and

from the Assignment of Errors which is presented and filed with this petition.

Plaintiff further says that there was involved in said petition and said amended petition as amended more than the sum of Five Thousand dollars, exclusive of interest and costs.

Wherefore, the plaintiff considering itself aggrieved, prays that a Writ of Error may be allowed and may issue in its behalf to the Supreme Court of the United States, upon the question of the jurisdiction of the court, hereby determined, and that the errors so complained of may be corrected and that a complete transcript of the record, proceedings and papers in this cause duly authenticated may be sent to said Supreme Court of the United States.

Dated at Cincinnati, Ohio, this 10th day of April, 1922.

A. JULIUS FREIBERG,
FREIBERG & GEOGHEGAN,
Attys. for Plaintiff.

The foregoing petition for Writ of Error was duly presented to me this 10th day of April, 1922, before the allowance of the writ
115 of error to the Supreme Court of the United States in said cause.

PECK,
*United States District Judge for the
Southern District of Ohio.*

116 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Assignment of Errors.

(Filed April 10th, 1922.)

Now comes the above named plaintiff, Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, by its counsel, and in connection with its petition for a Writ of Error to the Supreme Court of the United States, assigns error in the record and proceedings in the above entitled cause, as follows:

1. That the said court erred in sustaining defendant's motion to dismiss the plaintiff's petition and plaintiff's amended petition as amended herein filed.

2. That said court erred in rendering judgment against the plaintiff in said cause and that the said judgment is contrary to law and the facts as stated in the pleadings in said cause.

3. That the said court erred in deciding that it had no jurisdiction of the subject matter set forth in the petition and in the amended petition as amended and in dismissing said cause for that reason.

117 Wherefore, the said plaintiff prays that the judgment of said court be reversed, and that such directions be given to the United States District Court to the end that the plaintiff have in said cause such damages and relief at the hands of the defendant to which under the law of the United States the plaintiff may be found to be entitled.

Dated at Cincinnati, Ohio, this 10th day of April, 1922.

A. JULIUS FREIBERG,

FREIBERG & GEOGHEGAN,

Attorneys for Plaintiff.

The foregoing Assignment of Errors was duly presented to me this 10th day of April, 1922, before the allowance of the Writ of Error to the Supreme Court of the United States in this cause.

PECK,

*United States District Judge for the
Southern District of Ohio.*

118 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Allowance of Writ of Error.

(Filed April 10th, 1922.)

This day came Houston Coal Company, a corporation under the laws of the State of West Virginia, and presented a petition for allowance of a Writ of Error and Assignment of Errors accompanying the same, which petition upon consideration of the court is hereby allowed upon the filing of a bond in the sum of \$500 with good and sufficient security to be approved by this court.

J. W. PECK,

*United States District Judge for the
Southern District of Ohio.*

119

Certificate.

(Filed April 10th, 1922.)

United States District Court, Southern District of Ohio, Western
Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing
under the Laws of the State of West Virginia, Plaintiff,

VS.

THE UNITED STATES OF AMERICA, Defendant.

An order and judgment having been entered herein on April 10th 1922, granting the motion of the defendant to dismiss the amended petition of the plaintiff as amended, and dismissing the defendant from said cause for lack of jurisdiction of the subject matter, now, therefore, this court, in pursuance of the second paragraph of the Fifth Section of the Act of Congress, approved March 3, 1891, hereby certifies to the Supreme Court of the United States that in the above entitled cause the jurisdiction of this court of the subject matter of the action was in issue, and was decided adversely to the plaintiff, and that by reason thereof, and not otherwise, the judgment of dismissal of April 10th 1922, shown in the record herein was entered; that pursuant to said Act above mentioned, the following question is hereby certified to the Supreme Court of the United States:

Whether upon the pleadings and particularly the amended
petition as amended filed by the plaintiff in said cause, this
court acquired jurisdiction of the subject matter of the action.
Dated at Cincinnati, Ohio, this 10th day of April, 1922.

JOHN W. PECK,

*United States District Judge for the
Southern District of Ohio.*

121

Bond.

(Filed April 10th, 1922.)

Know all men by these presents: That we, Houston Coal Company, a corporation under the laws of the State of West Virginia, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound unto the above named The United States of America, in the sum of Five Hundred Dollars (\$500.00) to be paid to the said The United States of America for the payment of which well and truly to be made, we do bind ourselves and each of our successors and assigns jointly and severally firm by these presents.

Sealed with our seals and dated the 10th day of April, 1922.

Whereas, the above named Houston Coal Company, has prosecuted a Writ of Error to the United States Supreme Court to reverse the

order and judgment dismissing the amended petition as amended of the said Houston Coal Company heretofore filed in the United States District Court for the Southern District of Ohio, Western Division, said judgment of dismissal being dated the 10th day of April, 1922, rendered in the above entitled suit in court,

Now, therefore, the consideration of this agreement is such that if the above named Houston Coal Company, a corporation, shall prosecute its Writ of Error to reverse and set aside said judgment of dismissal, and answer all damages and costs, if it fail to make its plea good, then this agreement shall be void, otherwise the same shall be and remain in full force and effect.

[SEAL.]

HOUSTON COAL CO.,
By T. E. HOUSTON,
President.

THE ÆTNA CASUALTY AND SURETY COMPANY, [SEAL.]
By JOHN P. RYAN,
Attorney in Fact.

Approved by

J. W. PECK,

*District Judge for the United States
District Court for the Southern
District of Ohio.*

April 10th, 1922.

122 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Stipulation for Transcript.

(Filed April 13, 1922.)

It is hereby stipulated by and between the plaintiff, Houston Coal Company, by its attorneys, and the defendant, the United States of America, by its attorney, the United States Attorney for the Southern District of Ohio, that a transcript of the record of the above entitled matter in error to the Supreme Court of the United States shall consist of the following:

1. That part of the original petition consisting of the introductory paragraph and the first cause of action; also (omitting that part of the petition beginning with the second cause of action and ending with the forty-fourth cause of action, both inclusive, it being agreed that the causes of action so omitted are identical with the first cause

of action, except with reference to the amounts of coal alleged to have been requisitioned when taken from the plaintiff by the officers of the Navy, the dates when taken and the alleged values of the coal so taken), the prayer for judgment for the total sum of Three Hundred and Fourteen Thousand, Seven Hundred and Thirty and 74/100 dollars (\$314,730.74).

123 2. The motion of the defendant to dismiss the original petition.

3. The opinion of Judge Peck on the decision of said motion.

4. The order of the court sustaining said motion and giving plaintiff leave to file an amended petition.

5. The amended petition.

6. The motion to dismiss the amended petition.

7. The order authorizing the filing of an amendment to the amended petition and ordering the motion to dismiss to stand as to said amended petition as amended.

8. The amendment to the amended petition.

9. The opinion of Judge Peck on the motion to dismiss the amended petition as amended.

10. The judgment entry dismissing the amended petition as amended, for lack of jurisdiction.

11. Petition for Writ of Error to the Supreme Court.

12. Assignment of Errors.

13. Order allowing the Writ of Error.

14. Certificate.

15. Bond.

16. Writ of Error.

17. Citation with return.

18. Stipulation as to contents of the record.

It is further stipulated and agreed that the printing of the captions, jurats, the affidavits of service, together with a copy of a letter notifying the Attorney General of the United States of the filing of the suit may be dispensed with.

A. JULIUS FREIBERG,
FREIBERG & GEOGHEGAN,
Attorneys for Houston Coal Company.
THOS. H. MORROW,
*United States Attorney for the Southern
District of Ohio, Representing the
Defendant, The United States of
America.*

124 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation, etc., Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

I, B. E. Dilley, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing typewritten pages, numbered from 1 to 123, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the City of Cincinnati, Ohio, this 17th day of April, A. D. 1922.

[Seal of the United States District Court, Southern Dis. of Ohio.]

B. E. DILLEY,
Clerk,
By HARRY F. RABE,
Deputy.

125 UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia is plaintiff-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as is in the said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

J. W. PECK,
*Judge U. S. District Court,
Southern District of Ohio.*

April 10, 1922.

Service of the above citation is hereby acknowledged for defendant
The United States of America.

THOS. H. MORROW,
U. S. Attorney, S. D. O.

[Endorsed:] No. 3050. U. S. District Court, Southern District of Ohio. Houston Coal Company, plff., vs. The United States of America, deft. Citation. Filed at — o'clock — M., Apr. 10, 1922. B. E. Dilley, Clerk.

126 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States, for the Southern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, plaintiff in error and The United States of America defendant in error a manifest error hath happened, to the great damage of the said Houston Coal Company, plaintiff-in-error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the United States District Court, Southern Dis. of Ohio.]

B. E. DILLEY,
*Clerk of the District Court of the United States,
Southern District of Ohio,*
By HARRY F. RABE,
Deputy.

Allowed by
J. W. PECK,
*U. S. District Judge,
Southern District of Ohio.*

Apr. 10, 1922.

[Endorsed:] No. 3050. U. S. District Court, Southern District of Ohio. Houston Coal Company, plff., vs. The United States of America, deft. Writ of Error. Filed at — o'clock — M., Apr. 10, 1922. B. E. Dilley, Clerk.

Endorsed on cover: File No. 28,879. S. Ohio D. C. U. S. Term No. 365. Houston Coal Company, plaintiff in error, vs. The United States of America. Filed April 24th, 1922. File No. 28,879.

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Supreme Court of the United States

*HOUSTON COAL COMPANY, a corporation,
Plaintiff in Error,*

No. 365.

vs.

*UNITED STATES OF AMERICA,
Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This cause comes to this court by direct writ of error to the District Court of the United States for the Southern District of Ohio, Western Division, on assignments of error raising the question of the jurisdiction of the court, and on the certificate of the District Judge certifying to this court the sole question as to whether the court below had jurisdiction of the subject matter of the action. (R. 61.)

Section 238, Judicial Code.

Houston Coal Company, a West Virginia corporation, filed a petition consisting of forty-four causes of action, each one of which, however, is identical with the other so far as the questions herein raised are concerned.

The action was brought under Section 10 of an Act

of Congress known as the "Food Control Act" of August 10, 1917, commonly known as the Lever Act.

So far as that section is pertinent here, it reads as follows:

"Sec. 10. That the President is authorized, from time to time, to requisition foods, feeds, fuels and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities, for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessities or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies."

The petition of the plaintiff (R. 1) alleged in substance that the President, acting by the Secretary of the Navy, undertook, on various dates, to requisition sundry tons of coal, the property of the plaintiff, and contrary to fact, and without authority of law, to pay as a just compensation therefor, \$4.00 per ton, which sum was much less than the market value thereof.

The petition goes on to state that the plaintiff duly notified the Secretary of the Navy that the said compensation was not satisfactory to the plaintiff, but that thereupon the plaintiff was commanded by the Secre-

tary of the Navy to deliver the coal and that the command was obeyed; and it further alleges that the Secretary of the Navy caused to be paid to the plaintiff for the coal, the sum of \$4.00 per gross ton.

A further allegation was to the effect that by reason of the threats made against the plaintiff by the Secretary of the Navy, through his officers, the sum was accepted by way of partial payment, under protest, however, the plaintiff asserting that it accepted said sums under duress, and because of the threats of the officers of the Navy, and that in so accepting said sum, it (the plaintiff), protested to the Secretary of the Navy and reserved all rights which it might have, to compel the full payment of what was just compensation, over and above said sum of \$4.00 per gross ton, and that said sum of \$4.00 per gross ton was paid to the plaintiff with full knowledge on the part of said officers of said protest.

Plaintiff charged that by this manner of requisitioning, it was deprived of its property without just compensation, and without due process of law, within the meaning of the fifth and seventh amendments of the United States Constitution. Plaintiff then laid its damages at the difference between \$4.00 per gross ton, the amount paid, and \$8.00 per gross ton, the market value, amounting to the total sum of Three Hundred and Fourteen Thousand, Seven Hundred and thirty and seventy-four one hundredths dollars (\$314,730.74) and claimed this amount as due from the United States.

The Government then moved to dismiss the petition (R. 4) on two grounds: First, for failure to state a cause of action, and second, for the reason that the court had no jurisdiction of the subject matter. The District

Court sustained the motion on the ground that it had no jurisdiction of the subject matter. On an amended petition (R. 8) filed by leave (R. 7), the court took the same action.

The court construed Section 10 of the Lever Act to mean that the jurisdiction of the court hinged on the condition precedent that the claimant must have been paid 75 per cent. and no more, of the amount determined by the President to be just compensation. (R., 5.)

It concluded that the mere receipt by the plaintiff of the amount fixed by the President in full, barred the plaintiff from bringing its action, notwithstanding the circumstances as to protest, etc., alleged by the plaintiff, and notwithstanding allegations in the petition as to the express notice from the plaintiff to the Navy that the price was not satisfactory and that the plaintiff company reserved all its rights.

Counsel called the court's attention to the fact that the acceptance of the sum was not voluntary, and, therefore, not an agreed extinguishment of plaintiff's claim. Whereupon the court permitted an amendment to the petition (R. 53), setting forth more specifically the nature of the threats alleged to have been made by the officers of the United States. The amendment to the petition thereupon alleged that the officers of the Navy stated that the plaintiff would be compelled to sign a certain document, either announcing its willingness to receive the amount so fixed by the President in full, or receive 75 per cent. of that amount, and sue the United States for the difference; that when the plaintiff protested against signing said document, it was informed that the document was an order and not a contract, and must be obeyed, and if not obeyed, certain payments then due to the

plaintiff would not be paid, and that all of its coal and its mines would be confiscated, although there was no right under the circumstances in the said officers, or in the President to confiscate the coal of said mines.

Plaintiff added that the same threats were made in respect to the acceptance by the plaintiff of the price fixed by the President as just compensation, and claimed therefore that although it had received more than seventy five per cent. of the Navy's fixed price, it had never consented thereby to extinguish its claim.

Upon a further hearing, the District Court again dismissed the petition as amended (R. 57), for the reason that it had no jurisdiction of the subject matter. The court (R. 55) reiterated the reasons it gave in the earlier opinion, that is, that the plaintiff was not in a position to sue under the statute because it had accepted more than 75 per cent of the compensation fixed by the President. In addition, it refused to entertain the allegations of duress set forth in the amendment, first, because the threatened withholding of payments and moneys otherwise due, is not duress; secondly, that the threat of confiscation was entirely within the right of the President under the Lever Act.

The court held the view, that, in any event, before the plaintiff could bring its suit he must tender back the difference between 75 per cent. of what the President fixed as just compensation and the amount it received, and that the plaintiff having not alleged such tender, the court lacked jurisdiction to entertain the action.

The assignments of error are as follows: (R. 59).

ASSIGNMENT OF ERRORS.

1. That the court erred in sustaining the defendant's motion to dismiss the plaintiff's petition and plaintiff's amended petition as amended herein filed.

2. That said court erred in rendering judgment against the plaintiff in said cause and that the said judgment is contrary to law and the facts as stated in the pleadings in said cause.

3. That said court erred in deciding that it had no jurisdiction of the subject matter set forth in the petition and in the amended petition as amended and in dismissing said cause for that reason.

ARGUMENT.

THE RIGHT TO SUE IN THE DISTRICT COURT IS NOT PREDICATED ON THE PAYMENT OF SEVENTY-FIVE PER CENTUM OF THE PRESIDENT'S ALLOWANCE.

The passage of Section 10 of the Lever Act was no doubt in deference to the fifth amendment of the Constitution, to the effect that private property shall not be taken for public use without just compensation and that no person shall be deprived of his property without due process of law.

Suits against the United States had already been authorized by Congress in the Court of Claims and in the District Courts of the United States where the amount involved does not exceed ten thousand dollars. Sec. 145 Judicial Code, and Sec. 24, paragraph 20, Judicial Code.

In both these cases, however, a right of trial by jury

is expressly denied. One of the purposes of Section 10 of the Lever Act, if not the chief purpose, was to accord to one whose property had been taken, the right of trial by jury.

U. S. v. Pfitsch, 256 U. S., 547.

It is extremely likely that a trial by jury is required cases of this kind by the Constitution of the United States.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *"
Art. 7, U. S. Constitution.

That a suit in condemnation of property is a suit at common law was established in *Kohl v. U. S.*, 91 U. S., 367; *Beatty v. U. S.*, 203 Fed., 625; *Filbin Corporation v. U. S.*, 265 Fed., 354, but whether a trial by jury is, or is not, required by the constitution, it is evident that the whole scheme of Section 10 of the Lever Act was predicated on giving to the District Court exclusive jurisdiction and upon the preservation in that court, in a proper suit, of the right of trial by jury. In other words, Section 10 is in all respects a statute providing for condemnation proceedings by the Government where certain property of the individual was required for war purposes, with all safeguards and constitutional limitations applicable to that kind of a suit. The inference is, therefore, that Congress did not intend in this statute to shear away by conditions the basic and constitutional right of the citizen if his property had to be taken for war purposes, to have his compensation therefor determined in the orthodox way.

Filbin Corporation v. U. S., cited above.

Moreover, plaintiff contends that a construction of Section 10 which would make the citizen's right to sue conditional upon the payment of seventy-five per centum, and no more, of the amount allowed by the President would not be permissible under the fifth and seventh amendments above referred to.

Monongahela Navigation Co. v. U. S., 148 U. S., 312.

In that case, the statute provided in a condemnation proceeding that the court should exclude from consideration certain franchise values of the property to be taken.

Mr. Justice Brewer at page 327:

"The Legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public taking the property through Congress or the Legislature its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The constitution has declared that just compensation shall be paid and ascertainment of that is a judicial inquiry * * *."

"The right of the legislature of the state by law, to apply the property of the citizen to public use, to determine what is the just compensation it ought to pay therefor or how much benefit it has conferred upon the citizen by thus taking his property without his consent or to extinguish any part of such compensation by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries, in administering right and

justice, cannot for a moment be admitted or tolerated under our constitution.”

Isom v. Miss, 36 Miss., 300.

We do not contend that because the 75 per cent clause is in Section 10, that section is thereby rendered unconstitutional. What we contend is that such a construction of the statute should not be given to it so as to render it unconstitutional.

A careful scrutiny of Section 10 will disclose that the 75 per cent clause was inserted for the benefit of the citizen.

Our contention is that it gave permission to the Government authorities to pay 75 per cent of the President's allowance, if the whole is unsatisfactory to the citizen, so that he should not be kept out of all of his money pending further judicial inquiry.

“The provision that he (the President) should determine in the first instance so as to pay 75 per cent of the amount determined by him was a provision in favor of the owner of the property so as not to keep him out of all compensation pending the litigation to which he is entitled by the constitution to determine what was just compensation.”

Filbin Corporation v. U. S., 265 Fed. (above cited) at page 357.

The statute reads:

“If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid 75 per cent, of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five

per centum, will make up such amount as will be just compensation * * * .”

Prior to this language there is the express injunction upon the President that “he shall ascertain and pay a just compensation therefor.”

As between the President, therefore, and the aggrieved person, the President has the right to pay, and the aggrieved person has the right to receive a just compensation independently of the seventy-five per cent clause. There is therefore no room for the consideration entertained by the court below, (R. 5) that the aggrieved person had no right to receive what the President determined as just compensation, unless he gave up his right of action against the United States.

At first blush it might seem to have been an unwise thing for the aggrieved person to receive 100 per cent of the President’s allowance and still seek to maintain his right of action when he could have clearly maintained that right of action without cavil by receiving only seventy-five per cent.

But there were a good many reasons why the Houston Coal Company took this step, as will appear further along.

It will be noted that the connection between the seventy-five per cent clause and the clause giving jurisdiction is not such as to make the latter conditional upon the former.

Indeed, the phraseology is in substance:

“The claimant shall be paid seventy-five per cent of the amount determined by the President and shall be entitled to sue the United States to recover a further sum so as to make up just compensation.”

So much for the right to sue. But, as we have pointed out above, the claimant always had the right to a judicial inquiry as to his just compensation under favor of the fifth amendment, and especially under the sections of the Judicial Code above cited.

Following then upon the right to sue comes the clause giving jurisdiction in the following language:

“And jurisdiction is hereby conferred upon the United States and District Courts to hear and determine all such controversies.”

Our contention is that every controversy connected with the situation, including the present controversy as to whether the receipt of the President's allowance in full is an extinguishment of the claim, is part and parcel of the jurisdiction conferred.

Suppose the Government had refused to pay the 75 per cent but was willing to pay only 70 per cent or 50 per cent, could it be said that this act on the part of the Government debarred the claimant from prosecuting his suit at all? Or suppose the Government, by inadvertence or for any cause, had paid the claimant 76 per cent or 80 per cent, could it be said that this act of the Government debarred the plaintiff from its suit?

In a case in the Court of Appeals of the Third Circuit, the record disclosed that the fact was that the claimant had not received anything from the Government. Yet the court held that the action lay in the District Court.

“Indeed to our mind, the purpose and sole purpose of Congress in this section simply was to grant the claimant the right to sue the United States and to then vest jurisdiction in the District Court to hear and determine the allowed suit * * * * Which method did Congress have

in view when it enacted 'jurisdiction is hereby conferred upon the United States District Courts to hear and determine all such controversies'? Certain it is the jurisdiction was not committed to a judge or to the court sitting as a Judge. It was committed to the District Courts *without limitation*, and common practice and common sense alike suggest that Congress had nothing else in view than a jury trial."

U. S. v. McGrone, 270 Fed. Rep., 761.

We contend on this phase of the subject that the seventy-five per cent. clause was not a jurisdictional clause but was simply by way of permission given to the Government to pay seventy-five per cent pending the judicial inquiry, and that the jurisdictional clause followed further along.

THE QUESTION OF EXTINGUISHMENT OF THE CLAIM BY ACCEPTANCE OF ONE HUNDRED PER CENT OF THE PRESIDENT'S PRICE IS A MATTER OF PROOF AND IS NOT A JURISDICTIONAL FACT.

The petition of the plaintiff alleges that when the price was fixed at \$4.00 a ton, less than the market value, it was done "over the protest of this plaintiff." (R. 1).

The amended petition alleged that the plaintiff duly notified the Secretary of the Navy that the compensation so determined by him for the President *was not satisfactory* to the plaintiff (R., 8), and that it accepted the sum by way of partial payment, under protest, and in fear of threats made against said plaintiff.

"A requisition, like a taking by eminent domain, is not a taking under agreement. Acquiescence on the part of a loyal citizen to the tak-

ing of his property by the sovereign is not the equivalent of the making of a contract, or the entering into of an agreement in the legal sense of that term, for the obtaining of the property in question. A requisition is a one-sided exercise of authority, which depends either upon force or the acquiescence and loyalty of the owner of the property requisitioned, in order to accomplish the taking whether protest is entered or not, the obligation to repay is the same."

Benedict v. U. S., 271 Fed., at p. 719.

Reverting once more to Section 10, we find that the petition alleges what the Act calls for, that is, that the compensation *was not satisfactory* and that it so notified the President's subordinates, and when it took the amount allowed by the President it did so by way of **partial payment only, and that the money was paid to the claimant with full knowledge of this notification.** (R. 9).

An analysis of Section 10 shows that no particular way is provided in which the property owner must express his dissatisfaction with the price fixed by the President; in fact, he is not required to express this at all or to notify the Government whether or not such price is satisfactory to him. On the contrary, it seems that the act places upon the Government the duty of ascertaining whether or not such price is satisfactory to the property owner. If it is not satisfactory, then the provision is that the Government shall pay him 75 per cent of the compensation determined by the President.

Note that this is a command placed upon the Government and not an injunction or restriction against the property-owner forbidding him to receive more than seventy five per cent. The point is that the government

must determine what payment to make to the property-owner under the language of the section. The owner has the right to receive whatever the government may tender, although less than the just compensation to which he believes he is entitled. If the compensation fixed by the President is not satisfactory to him, and if in any reasonable way he has brought this fact to the attention of the government before any payment is tendered him by it, either by reservation of his legal rights or in any other manner fairly and reasonably susceptible of conveying to the government the conclusion on the part of the owner that such price is not satisfactory to him, and especially where he has reserved his legal rights to have the question of just compensation judicially determined, then we submit it is clear that the burden of determining the amount of the payment to be made to the property owner rests upon the Government.

If in spite of notice or knowledge that the compensation fixed by the President is not satisfactory to it, the Government either for the purpose of trying to foreclose the property-owner from thereafter contesting such compensation, or for any other purpose disregards the injunction contained in Section 10 and tenders the property-owner not 75 per cent. but 100 per cent. of the compensation which the President has fixed, then the consequences of this act must rest upon the actor, that is to say, upon the Government who tenders the payment. And this is especially true where the owner, in the most vigorous language protests against the price which has been fixed as inadequate and unfair, as in this case.

But it is argued that since the plaintiff is proceeding under Section 10, and Section 10 gives the District Court jurisdiction only of the difference between seventy-five

per cent of the commission fixed by the President and just compensation to be determined by the court, the District Court has no jurisdiction of an action for the difference between one hundred per cent of the President's price and such just compensation.

The considerations pointed out above answer this: The Section looked forward to the probability that in most cases the Government would pay the property owner only seventy five per cent of the President's price and therefore gave him the right to sue for the difference between such seventy five per cent, and just compensation; that is to say, for the difference between the amount paid him and just compensation. However, if the Government elects to pay him one hundred per cent of the President's price instead of seventy five per cent, the plain intendment and spirit of the Section is, that his right to sue for the difference between the payment made him and just compensation still remains and cannot be defeated by the act of the Government in paying him more than seventy five per cent. The whole includes all its parts. Note that the District Court is given jurisdiction "to hear and determine *all such controversies*," referring to controversies arising under Section 10. If it has jurisdiction of an action involving the difference between three-fourths of the price fixed by the Government and just compensation, it should have jurisdiction of an action involving a smaller amount; namely, the difference between the whole price fixed by the President and just compensation upon the principle that the express award of a greater power includes a lesser one. Manifestly, the spirit of the Act is that if the attempt by the Executive to exercise judicial functions contrary to the constitutional right of the property owner is not

satisfactory to him, he is given expressly the right to have the District Court determine the amount of just compensation to which he is entitled. *The real object of the statute is to authorize suit against the Government to ascertain what will be just compensation to the owner of the property taken.*

This is the bottom controversy arising under Section 10. Provision is made for certain payments to be made by the Government, which must be credited upon the amount of just compensation to which the property owner is entitled and he is given the express right to sue for the difference.

It can make no difference so far as the principle involved is concerned whether these partial payments or seventy five per cent of the President's price or any sum less than the whole are the just compensation to which the property owner is entitled. He must, of course, give the Government credit on account for all such payments. The Government then gives him the right to submit to the District Court for a trial by jury the ascertainment of the amount of compensation to which he is entitled, after crediting the Government with such payments that he has received.

Authorities elsewhere cited show that if either the President or Congress has attempted to usurp the functions of the courts by attempting to fix conclusively the amount of compensation to which the owner was entitled, such an effort would have been void because repugnant to the constitution; that a judicial proceeding to ascertain the amount of compensation to which an owner is entitled for his property which has been requisitioned or condemned is not a suit against the United States brought by the owner for which express authority must

be given by some act of Congress, but in reality merely a second or later step in a proceeding which has already been commenced by the United States against the property owner by its taking his property, which step is merely the assertion of a right given him by the Fifth Amendment to require the United States as a condition to the taking of his property to pay him just compensation for it.

Filbin Corporation v. U. S. (above cited).

~~100 per cent.~~
We are concerned here only with the question of jurisdiction. Whether or not the plaintiff by accepting 100 per cent has, by this act extinguished its claim is a question of fact to be passed on by the court and jury. Taking the averments of the petition as true, as we understand they must be taken at this stage of the case, we submit is manifest that the plaintiff did not accept the price fixed by the Government for its coal as satisfactory. The petition states the contrary. (R. 8).

If the Lever Act had never been passed, and this suit were in the Court of Claims, surely the question of the receipt of 100 per cent of the amount that the Executive had decided to be in his opinion fair would not prevent jurisdiction. It is true that there were there no other facts but the bare acceptance of the same, the evidence and proof might justify non-suit.

We submit therefore that the court below, in its first opinion when it says in substance that the consent of the Government to be sued at all depends upon the **dissatisfied person having accepted three-fourths of the award** and no more, was clearly in error. (R. 6).

We conclude on this phase of the case that the effect of the acceptance of the sum of 100 per cent of the

President's allowance by the plaintiff below was purely a question of proof, to be passed on by the court and jury.

EVEN IF ON ITS FACE THE RECEIPT OF MORE THAN SEVENTY-FIVE PER CENT. IS AN EXTINGUISHMENT OF THE CLAIM, THE ALLEGATIONS OF DURESS NEGATIVE THAT RESULT.

We have argued that the seventy-five per cent. clause has of itself, nothing to do with the jurisdiction of the court, and we have contended that so long as the petition stated that before the receipt of the money and at the time of the receipt of the money the Government was duly notified that the price was not satisfactory, and that the plaintiff, if paid the money, would retain all of its rights, the co-incident receipt of the President's price would not of itself bar the jurisdiction to entertain the suit. The petition, however, also alleged that the acceptance of 100 per cent. of the President's price when tendered by the government was made by the plaintiff under duress. (R., 8.)

In deference to the court's opinion that unless the statements as to duress were amplified in specific detail, he would rule that there had been an extinguishment of the claim, the plaintiff filed, with leave, (R. 53) an amendment to the amended petition setting forth specifically the nature of the duress.

The allegations as to duress (record page 53) were to the effect that both in signing the document and in accepting the money the plaintiffs were influenced to do so by threats on the part of the Navy officers that other money due, or to become due to the plaintiff, would not be paid and that all its coal and its mines would be confiscated by the government.

The acts of the Navy officers were what is known as "moral duress" by the government. This court has held on a number of occasions that acts done or money paid under that kind of duress did not bind the actor or the recipient.

"An importer had put into his invoice the price actually paid for goods, with charges, and proposed to enter them at the values thus fixed. The collector concluded that the value would be ascertained as of the time of shipment in New York which was considerably higher. The importer protested but in order to avoid the penalty which was threatened, he did make an addition to his invoice so as to escape that penalty. In an action to recover back the excess duties the court held: 'this addition and its consequent payment of the higher duties were so far from voluntary in him that he accompanied them with remonstrances against being thus coerced to do the act in order to escape a greater evil and accompanied the payment with a protest against the legality of the course pursued towards him.' * * *

"Now it can hardly be meant in this class of cases, that, to make a payment involuntary, it should be done by actual violence or any physical duress. It suffices, if the payment is caused on the one part by an illegal demand, and made on the other part reluctantly and in consequence of that illegality, and without being able to regain possession of his property except by submitting to the payment."

Maxwell v. Griswold, 10 Howard, 243.

"Where the United States instituted an action for the recovery of money on a bond given with sureties, by a purser of the Navy and the

defendants, in substance, pleaded that the bond was variant from that prescribed by law, and was under color of office, extorted from the obligor contrary to the statute, by the then Secretary of the Navy, as the condition of the purser's remaining in office and receiving its emoluments, and the United States demurred to this plea, it was held that the plea constituted a good bar to the action."

U. S. v. Tingey, 5 Peters, 115.

"Where the Internal Revenue Bureau requires a commission (on the sale of stamps) to be received in stamps instead of money and refused to modify its decision, receipts and settlements made in pursuance of that requirement and necessity, were not voluntary in such sense as to preclude the claimant from subsequently insisting on his statutory rights and recovering such commissions. * * *

"The parties were not on equal terms. The appellant had no choice. The only alternative was to submit to an illegal exaction, or discontinue its business. It was in the power of the officers of the law and could only do as they required."

Swift v. U. S., 111 U. S., 22.

"The payment of money to an official to avoid an onerous penalty, though the imposition of that penalty might have been illegal, was sufficient to make the payment an involuntary one."

Robertson v. Frank, 132 U. S., 17.

"When such duress is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby

ought not to be regarded as voluntary. When the duress has been exerted by one clothed with official authority or exercising a public employment, less evidence of compulsion or pressure is required."

Case above cited.

In respect to the allegations in the amendment to the petition touching the threats of withholding payments due to the plaintiff in case it did not accept the sums tendered by the Government in full payment, the District Court below cited (R., 56) the case of *Silliman v. United States*, 101 U. S., 465, to the effect that the threatened withholding of payments due does not come under the category of moral duress by the government for the reason that the aggrieved party always had the right to sue the United States for the money withheld.

We contend, however, that although the mere threat of withholding payments already due may not in themselves constitute duress, standing alone, nevertheless where such threats are one of a number of threats calculated to force the coal operator to sign an agreement relinquishing his rights, there the situation is very different.

In the Swift case cited above, 111 U. S., 22, it appeared that while it was true that the claimant in purchasing new stamps would have had to continue to make the same agreements, he always had the right to bring suit against the United States just as the plaintiff had in the Silliman case, for under payment on any particular item; that is to say, he could have continued in business by paying the government's exactions and suing for his damages without giving up the right to sue on the earlier transaction; yet the court allowed recovery on all

the transactions and allowed the principle of duress touching the agreements of settlements, notwithstanding the claimant always had the right to sue on the breach of the earlier agreements.

The threat to take, over all of the plaintiff's coal and all of its mines if carried into effect, would of course have put the plaintiff out of business.

The court below seemed to think that the threatened confiscation of the mines of the plaintiff were within the right of the officers of the Navy (R., 56).

The amendment to the petition clearly alleges (R., 54) that the threat to confiscate the coal and the mines was not legal. It is true the Lever act, under certain conditions, justified the President in taking over the coal and the mines.

“That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the army or the maintenance of the Navy or for any other public use connected with the common defense, he is authorized to requisition and take over for use or operation by the Government any factory * * * mines or other plant. * * *”

Act of August 10, 1917, Section 12.

It must be remembered that the right of the President to take over the mines under Section 12 of the Lever Act is limited to occasions.

“Whenever and wherever in his judgment it is necessary for the official prosecution of the war.”

The right to confiscate mines was not given to the President and in turn to army and navy officers for the

purpose of extorting private property from individuals at a price 50 per cent. lower than the market value of the articles.

The threat made by the navy officers as alleged in the petition, if carried into effect, would have been by way of requiring this particular coal company to part with its property at a price below the market, and therefore unfair, and not to satisfy any public emergency connected with the war.

The first section of the Lever Act passed August 10, 1917, provided that

“By reason of the existence of the state of war it is essential to the national security and defense, for the successful prosecution of the war and for the support and maintenance of the army and navy to secure an adequate supply, etc., * * * that *for such purposes* the instrumentality, means methods, powers, authorities, duties, obligations and prohibitions hereinafter set forth are created.”

Pursuant to this provision during the war the President made many orders in reference to coal. After the Armistice on November 11, 1918, and by January 31, 1919, the various orders had been gradually modified or suspended.

Toward the end of 1919 the Fuel Administration no longer existed. High prices for all materials were ruling and the war emergency was over. American troops had been demobilized and when on October 27, the President vetoed the Volstead Act, he specifically stated that the war emergency had ended; that the armies had been demobilized and that he could see no reason for continuing in effect this war-time measure.

When Congress confers upon the President the power to inquire and decide whether a necessity existed in time of war, it is true that the scope of this power is not limited to activities in the field, and dispersion of the enemy. We are not unmindful of the case of *Stewart v. Kahn*, 11 Wallace, 493, and other cases to this effect. But the question is not what powers Congress could have granted but what powers has it granted in this respect. Congress surely did not intend that the words "necessary for the essential prosecution of the war" should comprehend the seizure of coal mines after April 1, 1920, for the purpose of forcing the mine owner to sell his coal to the Government at less than the market price. Whether a state of war technically existed or not at this time, there was no *prosecution of the war* to which any such confiscatory order could contribute efficiency. We do not believe that the courts would permit arbitrary powers conferred upon the executive in war-time to extend beyond the period reasonably calling for their use. Otherwise under the doctrine of *Stewart v. Kahn* above cited, there would never be an end of the hectoring of private property owners by government officials.

We think therefore that the threats set forth in the petition as amended were not threats to do something that the government had the right to do.

Plaintiff's petition clearly alleges that the circumstances set forth in the act justifying such seizure were not present; that is, that the President had, or would find it necessary, in order to secure an adequate supply of necessities, or for any other public use connected with the common defense, to take over the mines or confiscate the coal, and that there was, to the full knowledge of the President, and of said officers, an abundant supply, or

sources of supply, for all of said purposes at just and reasonable prices.

Plaintiff further alleges (R., 54) that it had not in any respect failed to conform to the prices and regulations fixed or made by the President, or to conduct its business efficiently, or to do any of the things required by it to be done under Section 25 of the Lever Act. Inasmuch as it was only by virtue of Section 25 that the threatened act could be carried into effect, and inasmuch as the statements of fact in the petition must, in this proceeding, be taken to be true, we have a situation where government officers were threatening to do an illegal act, the result of which caused the plaintiff to accept the price tendered by the President's subordinates.

In the case at bar, at all events, the Navy Officers had no right to take the coal or to take the mines of the plaintiff. They could only have taken the coal, or the mines under the provisions of Sections 12 and 25 of the Lever Act, and the amended petition as we have seen alleges that none of the provisions of these sections were present. They certainly had no right to bludgeon the coal operator into furnishing coal at a price far below the market price, simply because the Navy officers had the physical power to make them agree to that price, there being no public emergency requiring the seizure of the coal or the seizure of the mines.

While we do not insist that the acceptance of the money by the Houston Coal Company was compelled by the duress of the Navy officers, what we do contend is that the acquittance of the United States and the agreement to extinguish the claim against the United States which the court below (R., 5) deduces from the facts stated in

the petition and from Section 10, even if the court's deduction is correct, are void and of no effect.

The suggestion made by the government below that in time of war, acts of government officers are not to be taken as strongly against the government as in time of peace are sufficiently disposed of we think by the following cases:

Ex parte Mulligan, 4 Wall., 2.

Hamilton v. Kentucky Distilleries Co., 251 U. S., 146.

Cohen Grocery Co. v. U. S., 255 U. S., 81.

We conclude that the 75% clause, if indeed it is a condition precedent to the jurisdiction of the lower court, has no bearing, in the face of the allegations of plaintiff's petition on the subject of duress.

THE PLAINTIFF WAS NOT BOUND TO TENDER BACK TWENTY-FIVE PER CENT. OF THE MONEY RECEIVED.

The court below seemed to think (Record, 55-56) that at all events before the plaintiff could take advantage of the jurisdiction of the court, he must tender back 25% of the President's price so as to leave the necessary 75%, which as he thought, constituted the necessary ingredient of jurisdiction.

Where a contract or an act is voidable for certain reasons, it is sometimes held that money received under favor of such a contract or act must be tendered before the plaintiff can proceed to his further remedy. But where the delay makes the contract or the act void, there surely can be no liability to return money received by way of partial payment.

The Government in this case, as is alleged in the peti-

tion (R., 8, 9), paid to the plaintiff \$4.00 per ton which the Government officers claimed was just compensation under Section 10 of the Lever Act. If at least \$4.00 a ton was admitted by the Government to be just compensation, then there can be no ground for the return of the money.

It is quite true that if upon trial the jury should assess a less sum than \$4.00 a ton, plaintiff would have to return to the United States the difference between \$4.00 and the amount held to be correct payment.

"Where a person is induced by threats of groundless prosecution to accept a less sum than is justly owing to him on a policy of fire insurance, in satisfaction of his claim, and to surrender the same, he may maintain an action on the policy for the balance due, without returning or tendering back the money so received."

Ins. Co. v. Hull, 51 O. S., page 270.

See, also,

Leslie v. Keepers, 68 Wis., 123, and
Fist v. Fist, 3 Colo. Appeals, 273.

On this general subject we have to say that even if the Government might be said to have the right by way of answer to compel the plaintiff to return to the court, or tender to it the 25%, we submit that it is stretching matters pretty far to make such a tender the basis of the jurisdiction of the court as to the subject-matter at the very outset.

The doctrine of tender may affect the rights of the parties as between themselves, to be fought out at the trial, but surely it can have no bearing on the question of the jurisdiction of the court.

CONCLUSION.

1. The 75% clause in Section 10 of the Lever Act does not enter into the question of the jurisdiction of the court.

2. The question of extinguishment of the claim by the plaintiff's having accepted 100% of the price fixed by the President is a matter of proof and not a jurisdictional fact.

3. Though the acceptance of 100% of the President's price might constitute an extinguishment of the claim under ordinary circumstances, under the acts in the case at bar specifically set forth in the petition, the duress exercised by the government officers took away from the acceptance of that money any and all consequences upon which an extinguishment of the claim might be said to be based.

4. Plaintiff was not bound to tender back any part of the money voluntarily paid by the Government.

It is true, the plaintiff is bound to credit the government with the amount it has been paid, but the retention of the money pending the trial of the case can have no possible bearing on the jurisdiction of the court.

Respectfully submitted,

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